IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

Appeal No 300 of 2005
in
Notice of Motion No.33l5 of 2002
in
Suit No. 204 of l999

Gokul Construction Co Pvt Ltd ..Appellant
vs
M/s Business India & ors..Respondents

Mr A S Doctor i/b Federal & Rashmikant for appellant
Mr.Amin Khare for respondents.

CORAM: A.P.SHAH & S.J.VAZIFDAR JJ.

Dated 23.3.2005

P.C:

Heard advocates.

2 By consent order dated 6.5.l999 the respondents were restrained inter alia that:

"l5. Agreed and ordered that until the decree herein is marked satisfied:

i. Defendant. nos, 6,9, and ll respectively shall not undertake any restructuring exercise of the Business India Group comprising of defendant .nos.l to 4,6, 9 and ll as a whole or otherwise,except with the consent in writing of the plaintiff,

which consent the plaintiff shall not unreasonably withhold provided that the consideration flowing therefrom is paid over to the plaintiff and with the leave of the court save as specified in clause 2(a)(ii).

ii. Defendant nos. 5,6,9 and ll shall not transfer in their respective Register of Members the shares held by defendant nos.l to 4 in Defendant .nos 5,6,9 and ll save and except if the shares are sold in execution of the decree herein".

3. The appellants filed the present notice of motion on apprehension that the respondents had initiated steps for restructuring the buildings without consent of the appellants. By order dated 2.l2.2004 D.G.Deshpande J. directed respondents to disclose details of the restructuring but it appears that no details were disclosed .Ultimately respondents vide their letter dated l3.l.2005 to the advocates of the appellants stated that:

"We have to inform you that after l9th July 2002 no progress has been made in restructuring scheme commenced by IL & FS on our instructions as Unit Trust of India has

not given its consent yet. We further assure you that we will not proceed further in the scheme without taking into confidence your clients."

(emphasis supplied)

4. The learned counsel for the respondents reiterated that even as of this date there is no progress in restructuring scheme and he assured the court that the respondents will not proceed further in the scheme without taking consent of the appellants.

5. In the result, the order of the learned single Judge is set aside. Appeal and notice of motion are allowed to be withdrawn with liberty to take fresh proceedings,if necessary.